

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Crl.MC.No. 54 of 2007()

AGAINST THE ORDER DATED 26/09/2006 IN CMP. 8424 /2006 IN
CC.1278/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA
.....

PETITIONER: COMPLAINANT IN CC NO.1278/2004

REMY VARGHESE, S/O. GEEVARGHESE,
PROPRIETOR, KANDATHIL ELECTRONICS,
PULAMON, KOTTARAKKARA, REP. BY THE POWER OF
ATTORNEY HOLDER GEEVARGHESE,
THONDALIL PUTHENVEEDU, VETTIKKAVALA VILLAGE,
KOTTARAKKARA, KOLLAM DISTRICT.

BY ADV. SRI.K.SANIL KUMAR

RESPONDENTS: ACCUSED IN CC NO.1278/2004

1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.
2. ABDUL HAMEED @ ABDUL LATHEEF,
SAMENA MANZIL, AVANEESWARAM, VILAKUDI,
PATHANAPURAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.ANCHAL C.VIJAYAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.54 of 2007

Dated this the 18th day of January 2007

O R D E R

The petitioner is the complainant in a prosecution under Section 138 of the Negotiable Instruments Act. It is his case that the accused has been working as his agent for supplying weighing scales to the customers. He allegedly used to collect the weighing scales and supply it to the members of the public. The cheques are allegedly issued towards the price of the weighing machines supplied to the customers by the accused. The prosecution is in respect of four cheques for a total amount of Rs.62,500/-. The signature in the cheques is admitted. There is no dispute regarding entries made in the cheque also. The short contention raised is that the cheques were handed over as security when the weighing scales were entrusted to the accused for supply to customers. Notice of demand though duly received and acknowledged did not evoke any response. When the complainant was examined, an attempt was made to confront him with a document, which was later marked as Ext.D5. The cross-examination of the complainant was read to me in detail. It

shows that Ext.D5 document was shown to the complainant/PW1 but it was not marked as he has not admitted the same.

2. Later, in the course of the trial, the accused examined himself as DW1 and an employee of PW1 was examined as DW2. It is the case of the accused that in Ext.D5, both PW1 and DW2 had made the entries. DW2 also denied the same.

3. The accused wanted the disputed document Ext.D5 to be sent to the expert for comparison. Of course, the accused did not stand by the contents of Ext.D5. He did not admit the contents of Ext.D5 but according to him, the complainant had prepared the said statement showing what according to the complainant was the liability.

4. The accused wanted Ext.D5 to be sent to the expert. According to him proof of Ext.D5 by adducing evidence of the handwriting expert would reveal and establish the falsity of the case of the complainant as to how the cheques were issued.

5. The learned Magistrate accepted the request of the accused and proceeded to pass the impugned order. The complainant claims to be aggrieved by the impugned order. The attempt of the accused is only to protract the proceedings, it is

contended. The interests of justice demand an expeditious disposal and the unnecessary forwarding of Ext.D5 to the expert, as directed in the impugned order would work out great injustice and unnecessary protraction of proceedings, it is contended.

6. I have considered all the relevant inputs. It is true that the accused does not stand by Ext.D5. He does not admit that the net liability shown in Ext.D5 is correct but according to him, the nature of the liability and the nature of the transaction between the parties can be decided from Ext.D5 if the same is properly proved.

7. I am satisfied, in these circumstances, that the impugned order does not warrant interference. In the circumstances of the case, I am satisfied that the discretion exercised by the learned Magistrate under Section 254(2) Cr.P.C to forward the disputed document to the handwriting expert cannot be held to result in any failure or miscarriage of justice. The mere fact that the accused does not stand by all the entries in Ext.D5 is, according to me, not a sufficient reason to conclude that the impugned order is not justified or that it leads to failure or miscarriage of justice. Notwithstanding the inevitable delay

which is bound to occur in the final disposal of the case, I am satisfied that the discretion exercised by the learned Magistrate does not warrant interference.

8. In the result, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006